

Before the  
 Federal Communications Commission  
 Washington, D.C. 20554

In the Matter of )  
 )  
**ALLTEL CORPORATION** ) FRN No. 0002942159  
 ) File No. EB-07-IH-5352  
 Parent Company of Licensees of Various )  
 Authorizations in the Cellular Radiotelephone )  
 and Other Wireless Services )

**CONSENT DECREE**

1. The Enforcement Bureau of the Federal Communications Commission and ALLTEL Corporation, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation of ALLTEL Corporation’s compliance with the terms and conditions contained in *Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc.*, WT Docket No. 05-339, Memorandum Opinion and Order, 21 FCC Rcd 11526 (2006).

2. For purposes of this Consent Decree, the following definitions shall apply:

- (a) “ACI” means ALLTEL Communications, Inc., a wholly-owned subsidiary of ALLTEL, and includes all affiliates and subsidiaries thereof.
- (b) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
- (c) “Adopting Order” means an order of the Bureau adopting this Consent Decree.
- (d) “ALLTEL” means ALLTEL Corporation and includes all affiliates and subsidiaries thereof.
- (e) “*ALLTEL-Midwest Merger Order*” means *Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc.*, WT Docket No. 05-339, Memorandum Opinion and Order, 21 FCC Rcd 11526 (2006).
- (f) “Any” shall be construed to include the word “all,” and the word “all” shall be construed to include the word “any.” Additionally, the word “or” shall be construed to include the word “and,” and the word “and” shall be construed to include the word “or.” The word “each” shall be construed to include the word “every,” and the word “every” shall be construed to include the word “each.”
- (g) “Bureau” means the FCC’s Enforcement Bureau.
- (h) “Civil Payment” means the amount of money that ALLTEL has paid or will pay to the United States and the State of Minnesota to terminate DOJ’s investigation of ALLTEL’s compliance with the Initial DOJ Consent Agreement.

- (i) “Commission” or “FCC” means the Federal Communications Commission.
- (j) “DOJ” means the U.S. Department of Justice.
- (k) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (l) “Initial DOJ Consent Agreement” means the settlement arrangement entered into by ALLTEL and Midwest and the DOJ and State of Minnesota to address the competitive concerns raised by the DOJ and the State of Minnesota regarding the merger of ALLTEL and Midwest.
- (m) “Investigation” means the Bureau’s investigation of ALLTEL’s compliance with the terms and conditions of the *ALLTEL-Midwest Merger Order*.
- (n) “Midwest” means Midwest Wireless Holdings, L.L.C.
- (o) “Parties” means the Bureau and ALLTEL.
- (p) “Voluntary Contribution” means the amount of money that ALLTEL has paid or will pay to terminate the Bureau’s Investigation of ALLTEL’s compliance with the *ALLTEL-Midwest Merger Order*.

## I. BACKGROUND

3. ALLTEL is a privately held Delaware corporation headquartered in Little Rock, Arkansas, with annual revenues of nearly \$8 billion.<sup>1</sup> It holds numerous FCC authorizations and provides wireless voice and data communications to approximately 12 million customers nationwide through various subsidiaries, including ACI.

4. On December 2, 2005, ALLTEL and Midwest filed four applications seeking consent to the transfer of control of licenses held by subsidiaries of Midwest to ACI.<sup>2</sup> The Antitrust Division of the DOJ and State of Minnesota each reviewed the proposed merger of ALLTEL and Midwest, and concluded that the transaction was likely to result in competitive harm in four geographic markets in Minnesota: Cellular Market Area (“CMA”) 488 Minnesota 7-Chippewa; CMA 489 Minnesota 8-Lac qui Parle; CMA 490 Minnesota 9-Pipestone; and CMA 491 Minnesota 10-Le Sueur (collectively, “Minnesota Markets”).<sup>3</sup> ALLTEL and Midwest entered into a settlement arrangement with the DOJ and State of

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<sup>1</sup> On November 16, 2007, ALLTEL completed its FCC-approved merger with Atlantis Holdings LLC, a holding company for certain investment funds ultimately controlled by the principals of TPG Capital, L.P. and The Goldman Sachs Group, Inc. As a result of the merger, ALLTEL’s stock ceased trading on the New York Stock Exchange and ALLTEL became a privately held corporation. See *ALLTEL Corporation and Atlantis Holdings LLC*, WT Docket No. 07-128, FCC 07-185 (rel. Oct. 26, 2007).

<sup>2</sup> See Application to Transfer Control of Licenses Held by Midwest Wireless Communications L.L.C. to ALLTEL Communications, Inc., File No. 0002391997 (filed Dec. 2, 2005); Application to Transfer Control of Licenses Held by Midwest Wireless Iowa L.L.C. to ALLTEL Communications, Inc., File No. 0002395311 (filed Dec. 2, 2005); Application to Transfer Control of Licenses Held by Midwest Wireless Wisconsin L.L.C. to ALLTEL Communications, Inc., File No. 0002395362 (filed Dec. 2, 2005); and Application to Transfer Control of Licenses Held by Switch 2000 L.L.C. to ALLTEL Communications, Inc., File No. 0002395398 (filed Dec. 2, 2005).

<sup>3</sup> See generally *United States v. ALLTEL Corp.*,

Minnesota designed to address the competitive concerns raised by the DOJ and State of Minnesota (“Initial DOJ Consent Agreement”).<sup>4</sup> Under the Initial DOJ Consent Agreement, ALLTEL agreed to divest certain cellular licenses and related operational and network assets in the Minnesota Markets (“Cellular Operating Units”).

5. The Commission also conducted an exhaustive analysis of the proposed merger. On October 2, 2006, the Commission similarly concluded that the merger would likely cause significant competitive harm in the Minnesota Markets.<sup>5</sup> Accordingly, the Commission also conditioned its approval of the ALLTEL-Midwest transaction on the divestiture of the Cellular Operating Units.<sup>6</sup> The Commission also conditioned its approval of the transaction on the divestiture of 10 MHz of PCS spectrum in Lac qui Parle County (“10 MHz PCS Divestiture”).<sup>7</sup>

6. To accomplish the divestiture, the Commission, as well as the Initial DOJ Consent Agreement, required a Management Trustee to be appointed to serve as manager of the Cellular Operating Units and the 10 MHz PCS Divestiture (collectively, the “Divestiture Assets”) until these assets were sold to third party purchasers.<sup>8</sup> During the period in which the Management Trustee was in day-to-day control of the Divestiture Assets, ALLTEL was to retain *de jure* control and have the sole power to market and dispose of the Divestiture Assets to third party buyers, subject to the Commission’s regulatory powers and process with respect to license transfers and assignments and the terms of the Initial DOJ Consent Agreement.<sup>9</sup>

7. The *ALLTEL-Midwest Merger Order* imposed the following obligations:

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Complaint, Case No. 06-cv-03631 (RHK/AJB) (D. Minn. filed Sept. 7, 2006) (“DOJ Complaint”); *United States v. ALLTEL Corp.*, Competitive Impact Statement at 3, Case No. 06-cv-03631 (RHK/AJB) (D. Minn. Sept. 7, 2006) (“DOJ Competitive Impact Statement”).

<sup>4</sup> Along with the DOJ Complaint and DOJ Competitive Impact Statement, the DOJ and the State of Minnesota filed a Preservation of Assets Stipulation and a Preservation of Assets Order with the United States District Court for the District of Minnesota (“District Court”) on September 7, 2006, and the parties jointly filed a proposed Final Judgment with the District Court. On September 8, 2006, the District Court entered the Preservation of Assets Order, and on January 8, 2007, the Court entered the Final Judgment. *See United States v. ALLTEL Corp.*, Preservation of Assets Stipulation, Case No. 06-cv-03631 (RHK/AJB) (D. Minn. filed Sept. 7, 2006) (“DOJ Stipulation”); *United States v. ALLTEL Corp.*, Preservation of Assets Order, Case No. 06-cv-03631 (RHK/AJB) (D. Minn. Sept. 8, 2006) (“DOJ Preservation Order”); *United States v. ALLTEL Corp.*, Final Judgment, Case No. 06-cv-03631 (RHK/AJB) (D. Minn. Jan. 8, 2007) (“Final Judgment”). These documents collectively set forth the terms and conditions of the Initial DOJ Consent Agreement.

<sup>5</sup> *ALLTEL-Midwest Merger Order*, 21 FCC Rcd at 11560, 11569-70, ¶¶ 92-93, 122.

<sup>6</sup> *Id.* at 11569-70, ¶ 122.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 11570, ¶ 123. On March 30, 2007, the Commission granted applications for consent to assign the wireless licenses that were a part of Divestiture Assets from WWC Holding Co., Inc., a wholly-owned indirect subsidiary of ALLTEL, to RCC Minnesota, Inc., a wholly-owned subsidiary of Rural Cellular Corporation (“RCC”). *See Applications of WWC Holding Co., Inc. and RCC Minnesota, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 6589 (WTB 2007). RCC’s acquisition of the Divestiture Assets closed on April 4, 2007.

<sup>9</sup> *ALLTEL-Midwest Merger Order*, 21 FCC Rcd at 11570, ¶ 123; DOJ Stipulation at 8-13, 16-17; DOJ Preservation Order at 9-13; DOJ Proposed Final Judgment at 1-2, 7-8.

From the date of release of this Order, and until the divestitures ordered herein have been consummated, [ALLTEL] and the Management Trustee shall preserve, maintain, and continue to support the Divestiture Assets and shall take all steps to manage them in a way as to permit prompt divestiture. We require that [ALLTEL] and the Management Trustee abide by the same provisions relating to the duties of the Management Trustee and the preservation of the Divestiture Assets as those contained in the DOJ Stipulation.<sup>10</sup>

The Initial DOJ Consent Agreement, in turn, required ALLTEL to maintain the Divestiture Assets for “normal and planned repair, capital improvement, upgrade and maintenance schedules, or at a greater level if necessary to insure that the Divestiture Assets remain competitive.”<sup>11</sup>

8. In early 2007, the DOJ and FCC received information questioning whether ALLTEL had adhered to its plan for making requisite capital expenditures with respect to new site development in the Minnesota Markets. Consequently, the DOJ and the State of Minnesota commenced an investigation of ALLTEL’s compliance with the Initial DOJ Consent Agreement, specifically, Sections V.C.4, VI.B.2 and VI.F of the DOJ Preservation Order and Section VIII of the Final Judgment. The Bureau also commenced its Investigation of ALLTEL’s compliance with the *ALLTEL-Midwest Merger Order*.

9. The DOJ, the State of Minnesota, and ALLTEL have entered into a settlement (“DOJ Settlement”) to terminate the DOJ’s investigation of ALLTEL’s compliance with the Initial DOJ Consent Agreement.<sup>12</sup> Pursuant to the DOJ Settlement, without any admission or determination of wrongdoing by ALLTEL and without any findings or adjudication with respect to any issue of fact or law, ALLTEL will make a Civil Payment in the total amount of \$1.325 million. The DOJ Settlement has been approved by the United States District Court for the District of Minnesota.<sup>13</sup>

10. In order to terminate the Bureau’s Investigation, the Parties hereby enter into this Consent Decree, in consideration of the mutual commitments made herein.

## II. AGREEMENT

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<sup>10</sup> *ALLTEL-Midwest Merger Order*, 21 FCC Rcd at 11571, ¶ 125; DOJ Stipulation at 9-23; *see also* DOJ Preservation Order at 10-22.

<sup>11</sup> DOJ Preservation Order, at VI.B.2.

<sup>12</sup> *See United States v. ALLTEL Corporation and Midwest Wireless Holdings LLC*, Joint Motion to Enter Order on Petition of Plaintiffs for an Order to Show Cause Why Defendant ALLTEL Corporation Should Not be Found in Civil Contempt, Case No. 06-cv-03631 (RHK/AJB) (D. Minn. filed Dec. 3, 2007); *United States v. ALLTEL Corp.*, Memorandum in Support of Joint Motion to Enter Order on Petition of Plaintiffs for an Order to Show Cause Why Defendant ALLTEL Corporation Should Not be Found in Civil Contempt, Case No. 06-cv-03631 (RHK/AJB) (D. Minn. filed Dec. 3, 2007); *United States v. ALLTEL Corp.*, Stipulation for Entry of Order and Settlement Agreement, Case No. 06-cv-03631 (RHK/AJB) (D. Minn. filed Dec. 3, 2007); *United States v. ALLTEL Corp.*, Proposed Order on Petition of Plaintiffs for an Order to Show Cause Why Defendant ALLTEL Corporation Should Not be Found in Civil Contempt, Case No. 06-cv-03631 (RHK/AJB) (D. Minn. filed Dec. 3, 2007).

<sup>13</sup> *United States v. ALLTEL Corp.*, Order on Petition of Plaintiffs for an Order to Show Cause Why Defendant ALLTEL Corporation Should Not be Found in Civil Contempt, (“Order”) Case No. 06-cv-03631 (RHK/AJB) (D. Minn. entered Dec. 4, 2007).

11. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. In express reliance on the covenants and representations in this Consent Decree, the Bureau agrees to terminate the Investigation.

12. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order. ALLTEL's decision to enter into this Consent Decree is expressly contingent upon the Bureau's issuance of an Adopting Order that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition or modification.

13. The Bureau agrees that, in the absence of new material evidence, it shall not on its own motion or in response to a third-party objection, initiate any inquiries, investigations, forfeiture proceedings, hearings, or other sanctions or actions against ALLTEL based in whole or in part on the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not initiate or recommend to the Commission any new proceeding, formal or informal, against ALLTEL regarding the matters that were the subject of the Investigation. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action against ALLTEL with respect to the basic qualifications of ALLTEL to be a Commission licensee.

14. The Parties agree that this Consent Decree shall become effective and binding upon the Parties on the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other final order of the Commission. Any violation of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission, or the Bureau pursuant to delegated authority, to exercise any rights and remedies attendant to the enforcement of a Commission order.

15. ALLTEL acknowledges that the Bureau has jurisdiction over the subject matter contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

16. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance by ALLTEL with the requirements of the Act or the Commission's rules or orders, including the *ALLTEL-Midwest Merger Order*. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, ALLTEL does not admit or deny any noncompliance, violation, or liability associated with or arising from its actions or omissions involving the Act, the Commission's rules or orders that are the subject of this Consent Decree.

17. ALLTEL agrees, within 30 calendar days of the Effective Date, to make a Voluntary Contribution to the United States Treasury in the amount of \$1.325 million, unless ALLTEL has, prior thereto, paid in full the Civil Payment, in which case ALLTEL's payment of the Voluntary Contribution pursuant to this Consent Decree shall be deemed to have been fully satisfied.

18. Nothing in this Consent Decree shall prevent the Commission or the Bureau pursuant to delegated authority from adjudicating any formal or informal complaint filed against ALLTEL pursuant to Section 208 of the Act, 47 U.S.C. § 208, and to take action in response to such complaint. If any such complaint is made, the adjudication of that complaint will be based solely on the record developed in that proceeding and neither the Commission nor the Bureau shall use any facts developed through the Investigation in any such proceeding. Except as expressly provided in this Consent Decree, nothing

herein shall prevent the Commission or its delegated authority from investigating ALLTEL's compliance with the Act, the Commission's rules, or this Consent Decree.

19. ALLTEL agrees to waive any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Consent Decree is adopted without change, addition, modification or deletion.

20. The Parties agree that if ALLTEL, the Bureau, the Commission, or the United States acting on the Commission's behalf, brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, none shall contest the validity of this Consent Decree or the Adopting Order, and ALLTEL and the Commission shall waive any statutory right to a trial *de novo* with respect to the issuance of the Adopting Order and shall consent to a judgment incorporating the terms of this Consent Decree.

21. The Parties agree that if any provision of this Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which ALLTEL does not expressly consent), that provision shall be superseded by such Commission rule or order.

22. ALLTEL agrees that the terms and conditions of this Consent Decree shall be binding on its successors and assigns.

23. The Parties agree that in the event that this Consent Decree is rendered invalid in any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

24. ALLTEL agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

25. ALLTEL and the Bureau each represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

26. This Consent Decree cannot be modified without the advance written consent of both Parties.

27. This Consent Decree may be executed in counterparts.

(This area intentionally has been left blank)

**FEDERAL COMMUNICATIONS COMMISSION  
ENFORCEMENT BUREAU**

By: \_\_\_\_\_  
Kris Anne Monteith, Chief

Date: \_\_\_\_\_

**ALLTEL CORPORATION**

By: \_\_\_\_\_  
Richard Massey, Chief Strategy Officer  
And General Counsel

Date: \_\_\_\_\_